

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 74 of 2003 (S/B)

1. Union of India
through Secretary,
Ministry of Postal Board
Dak Bhawan, Parliament Street,
New Delhi.
 2. Director General,
Dak Bhawan, Parliament Street,
New Delhi.
 3. Post Master General,
Uttaranchal Circle, Dehradun
 4. Senior Supdt. of Post Offices,
Nainital Division, Nainital
- Petitioners

Versus

1. Shanker Dutt Mauni
S/o Sri Narain Dutt Mauni
At present working in the office of
Senior Suptd. of Post Offices,
Cement House, P.O. Mallital,
District Nainital
 2. Presiding Officer,
Central Administrative Tribunal
Allahabad Bench
Circuit Sitting at Nainital
- Respondents

Mr. V.B.S. Negi, Sr. Central Govt. Standing Counsel for the petitioners.
Mr. M.C. Kandpal, Sr. Advocate assisted by Mr. Kurban Ali, Advocate
for respondent No. 1.

**Coram : Hon'ble P.C. Verma, J.
Hon'ble Prafulla C. Pant, J.**

Dt: 12 April, 2005.

By means of this writ petition, moved under Article 226 of
the Constitution of India, the petitioners, Union of India have

challenged the order dated 23.10.2002 (copy Annexure- 1 to the writ petition) passed in O.A. number 20 of 2001 by Central Administrative Tribunal, Allahabad Bench, whereby it has been directed that the respondent No. 1 and all other similarly situated persons be permitted to appear in the departmental examination for their appointment as postman and other lower grade officials in Post and Telegraph Department.

2) Brief facts of the case are that initially respondent No. 1 was engaged as casual labour on the post of Chowkidar on 11.09.1984 with the Postal Department. In view of the judgment dated 29.11.1989 of the Apex Court relating to regularization of casual labourers, the Department issued a circular letter dated 08.12.1992 to process the regularization of the casual labourers. The casual labourers, having more than three years continuous service, were required to be given temporary status in group 'D' category in the Department of Post and Telegraph but still respondent No. 1 was not regularised. It appears that the respondent No. 1 submitted an application to the Department on 06.02.1990 requesting for permission to appear in the departmental promotional examination but no decision was taken in his matter for more than ten years. Thereafter, he moved Original Application under Section 19 of the A.T. Act, 1985, before the Central Administrative Tribunal, Allahabad (for brevity hereinafter the CAT) for regularization and consequential benefits. Learned CAT found no justification in withholding the request of the respondent No. 1 to appear in the departmental promotional examination even after a period of 18 years of service, as such, it allowed the O.A. No. 20 of 2001 and directed that all other similarly situated persons be also permitted, if they apply, to appear in the departmental promotional examination. Aggrieved by said order of the CAT, this writ petition has been filed mainly on the grounds that only regular Group 'D' officials

are eligible to appear in the departmental promotional examination. It is further alleged in the writ petition that extra departmental officials are to be given preference in recruitment of Group 'D' post only and no separate quota is fixed for temporary status officials. Regularization of the respondent No. 1, according to the petitioners hinges on the condition that none of the extra departmental officials qualify or found eligible for recruitment of Group 'D' posts. As to the retirement benefits of an employee, 50% services rendered by the employee as a temporary status are to be counted towards his service. The respondent No. 1 has already been given a temporary status w.e.f. 29.12.1992 and is being treated at par with the temporary grade Group 'D' post employees. However, his services are yet to be regularised as such, he is not entitled to appear in the departmental promotional examination. The circular letters relied by the CAT entitle the employees only the holidays, leave, pension, insurance scheme, G.P.F. and medical aid but not the right to appear in the departmental examination. It is also alleged in the writ petition that the relief has been granted not only to the respondent No. 1 but also to other similarly situated persons without lawfully determining their rights.

3) A counter affidavit has been filed on behalf of the respondent Nos. 1, wherein, defending the impugned order passed by the CAT, it is stated that the respondent No. 1 is already getting regular salary on the basis of the Fifth Pay Commission with annual increments and in no way can be treated less than a regular employee.

4) We heard learned counsel for the parties and perused the record which includes the copies of the affidavits filed before the CAT.

5) A copy of communication No. 60-52/90-SPB.I dated 31st January, 1992 (copy Annexure-2 to the writ petition) issued by Asstt. Director General (SPN), Department of Posts, New Delhi addressed to All Heads of Postal Circles contains amendment in the Rules of the “Department of Posts (Postal Assistants and Sorting Assistants) Recruitment Rules, 1990” which provides filling of 50% of the posts of Postal Assistant and Sorting Assistants by promotion through departmental promotional examination failing which by direct recruitment. We further examined the copy of Departmental instructions dated 12.04.1991 contained in circular letter dated 12.04.1991 (copy Annexure- 3 to the writ petition), which provides that temporary status would be conferred on the casual labourers in employment as on 29.11.1989 and who continue to be currently employed and have rendered continuous service of at least one year; During the year they must have been engaged for a period of 240 days. It further provides that such casual workers engaged for full working hours viz. eight hours including half hour’s lunch time, will be paid at daily rates on the basis of the minimum of the pay scale for a regular Group ‘D’ official including the DA, HRA and CCA. It also provides relating to leave entitlement etc. Para- 7 of this Circular clarifies at conferment of temporary status does not automatically imply that the casual labourers would be appointed as a regular Group ‘D’ employee within any specified time frame. Para- 12 of this Circular categorically states that casual labourers may be regularised in units other than recruiting units also, subject to availability of vacancies.

6) Learned counsel for the respondent No. 1 could not show us if the Circular has been quashed by any competent court or if it has been superceded by any other administrative order. As such, we are in agreement with learned counsel for the petitioners that the learned CAT have erred in law by issuing

directing in violation of the aforesaid circular letter. More particularly, learned CAT has allowed the relief through the impugned order not only to respondent No. 1 but also all other similarly situated employees without examining their service records.

7) Therefore, we are of the view that the writ petition deserves to be allowed, and the same is accordingly allowed. The order dated 23rd October, 2002 passed by the Central Administrative Tribunal is quashed. No order as to costs.

(Prafulla C. Pant, J.)

(P.C. Verma, J.)

Dt. 12 April, 2005.

H. Negi